

**Reserved Water Rights Compact Commission**  
**2013 Legislative Proposals**  
**Water Policy Interim Committee – July 12, 2012**

**Confederated Salish & Kootenai Tribes (CSKT)-Montana Compact**

Primary components of the Compact include:

- Provisions for protection of existing state-based water users;
  - Call protection for non-irrigation users
  - Protections for irrigators
- Quantification of Tribal on-reservation water rights;
  - Instream flow for fish & wildlife
  - High mountain lakes
  - Wetlands
  - Flathead Indian Irrigation Project
  - Flathead System Compact Water
  - Uses by Tribes, Tribal members and allottees
- Establish an ordinance for the administration of water rights on the reservation;
  - Parallels Montana Water Use Act
  - Solution to current regulatory void
  - Unitary Management Board
  - Registration of Existing Uses
    - Incorporates pending domestic well certificates, permits, & changes
  - Domestic & Stockwater Allowance
  - Permit and Change Process
  - Enforcement
- Proposal for Resolution of the CSKT claims to off-reservation water rights;
  - Stevens Treaty – right to take fish in usual and accustomed locations
  - Bitterroot River – Co-ownership of MFWP contract water & recreation claims
  - Kootenai & Swan Rivers – mainstem water right, non-consumptive, instream use only, call protection for all non-irrigation & groundwater < 100 gpm, new appropriation limits on important bull trout tributaries, no limitation on uses excepted from permitting
    - Concerns raised by Lincoln County about Kootenai basin limitations. RWRCC consulting with Lincoln County and Tribes about best way to move forward.
  - Upper Clark Fork – Co-ownership with DFWP of Milltown Dam water right, Murphy Rights, and recreation claims
  - State Proposal re. Milltown right – 1904 priority date, non-consumptive instream flow right, 2000 cfs maximum and 1100 cfs minimum. Non-irrigation use not callable.
  - Tribes' response to the State's proposal – 1200 cfs minimum, broken down to 700 cfs from the Blackfoot@Bonner & 500 cfs from the Clark Fork@Turah, added basins for new appropriation limits

- State contribution to settlement.
  - Crow (1999) \$15 million; Fort Belknap (2001) \$17.5 million; Blackfeet (2009) \$35 million
  - CSKT - Components likely to include support for Flathead Indian Irrigation Project and Stock Water mitigation program (as part of protecting existing water users); implementation funding (for Water Management Board and unitary administration); and settlement support as negotiated.
- Negotiations are ongoing. A draft of the Compact is anticipated to be available for public review by late summer 2012.

#### **Fort Belknap-Montana Compact Funding**

- Request for \$4 million from general fund for the Peoples Creek minimum flow account (85-20-1007 MCA).
- The Compact was ratified by the 2001 Montana Legislature. The State committed \$17.5 million as its contribution to fund infrastructure improvements and mitigation measures, of which \$4 million is in the form of in-kind services, which have been provided. The 2005 Legislature authorized up to \$9.5 million in General Obligation bonds. The 2009 Legislature appropriated \$1 million for People's Creek minimum flow account. The \$4 million appropriation will meet the balance of the State's commitment. Federal settlement bill introduced May 2012 (S.3209).
- Bonds will not be issued nor funds disbursed until settlement ratified by Congress and the Tribes and approved by the Water Court.

#### **US Fish & Wildlife Service Charles M. Russell National Wildlife Refuge (CMR)-Montana Compact**

- The CMR was established by Executive Order in 1936 for the purpose of "the conservation and development of natural wildlife resources and for protection and improvement of public grazing lands and natural forage resources."
- The initial compact proposal from the FWS met with substantial public concern at the initial negotiation sessions, held March 15 & May 9 in Lewistown. Primary concerns with proposed closure to future appropriations (uses excepted from permitting requirements not included), the extent of the area affected, and inclusion of groundwater. Dialogue with those concerned is on-going. The parties are working on a revised proposal.

#### **US Bureau of Land Management Upper Missouri River Breaks National Monument (UMRBNM)-Montana Compact**

- Monument established in 2001.
- Proclamation designating Monument limits reservation of water to the Judith River and Arrow Creek basins.
- Negotiations held in Lewistown January 31 and May 1, 2012.
- Proposal seeks to maintain minimum instream flow as the means to maintain groundwater elevations along lower Judith and Arrow Creek.

- Primary components of the Compact include: a quantified base flow for the Judith River and Arrow Creek; restriction on new mainstem storage on Arrow Creek and the Judith River; and ramping requirements on new large (>20 cfs) direct from source diversions.
- The United States has agreed to subordinate its 2001 priority date to June 1, 2012.
- Current exceptions under § 85-2-306, MCA, are also excepted from restrictions of compact.

#### **Sunset Reserved Water Rights Compact Commission (RWRCC)**

- The RWRCC is scheduled to sunset July 1, 2013.
- This legislation repeals the statutes authorizing the RWRCC and amends certain statutes relating to the Montana water adjudication. The statutes include MCA 2-15-212, 85-2-217, 85-2-228, 85-2-233, 85-2-234, & 85-2 Part 7.
- The RWRCC was established by the Legislature in 1979 to negotiate settlements with Indian tribes and federal agencies that claim federal reserved water rights within the State.
- The water right claims of the tribes and federal agencies are suspended from adjudication while they are being negotiated. As of July 1, 2013 the suspension of adjudication is terminated and the tribes and agencies have 24 months to file claims for reserved rights with the Montana Water Court.